

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 1:01CR127-P

HENRY LEE PRUITT

DEFENDANT

ORDER

This matter comes before the court on the September 14, 2004, motion of Henry Lee Pruitt for an order requiring the United States to seek a reduction in the defendant's sentence based on substantial assistance under FED. R. CRIM. P. 35(b). The government has discretion to decide whether a defendant has provided substantial assistance and whether to file a motion under Rule 35. *United States v. Underwood*, 61 F.3d 306 (5th Cir 1995). The rule "does not require the government to move for a downward departure if the defendant provides substantial assistance, but rather grants the government discretionary power to make such a motion." *United States v. Garcia-Bonilla*, 11 F.3d 45, 46 (5th Cir.1993) (citing *Wade v. United States*, 504 U.S. 181, 112 S.Ct. 1840, 1844, 118 L.Ed.2d 524 (1992)). The government's decision not to seek a reduction in a defendant's sentence for substantial assistance cannot be challenged unless the defendant can show that the government relied upon an unconstitutional motive in refusing to seek the reduction. *Garcia*, 11 F.3d at 46. The defendant in this case has not alleged such a motive. As such, the instant motion to require the government to seek a reduction in the defendant's sentence is hereby **DENIED**.

SO ORDERED, this the 26th day of May, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE